PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 1983, the PHA would use data from the fiscal year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(c)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(c)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 990.110(e).

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§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year. The PHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the PHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) A PHA that is required by the Single Audit Act (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The estimated cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Performance Funding System calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Performance Funding System Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20 percent of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation*. In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 x No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when an HA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for Resident Council expenses.* In accordance with the provisions of 24 CFR part 964 and procedures determined by HUD, each HA shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly elected resident council in support of the duly elected resident council's activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected resident council and/or jurisdiction-wide councils, including but not limited to stipends. Ten dollars per unit per year shall fund HA costs incurred in carrying out resident participation activities.

(f) *Funding for Resident Council office space.* If there is no community or rental space available, and HUD has approved the use of a vacant rental unit for Resident Council office space, the unit will be eligible for operating subsidy (subject to appropriations) at the rate of the AEL for the number of months the unit is devoted to such use.

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§ 990.109 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and projecting this amount for the Requested Budget Year by applying an upward trend factor (subject to updating) of 3 percent, and multiplying this amount by the Projected Occupancy Percentage for the Requested Budget Year. Nondwelling income is projected by the PHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the PHA is computed as follows:

(1)(i) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months prior to the first day of the Requested Budget Year, except that if a change in the total of the Rent Rolls has occurred in a subsequent month which is prior to the beginning of the Requested Budget Year and prior to the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA shall use the latest changed Rent Roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the HA's implementation of an optional earned income exclusion authorized by the definition of ''annual income'' in 24 CFR 913.106(d). But see § 990.116 for the earned income incentive adjustment.

(2) *Three percent increase.* The average monthly dwelling rental charge per unit, computed under paragraph (b)(1)